

**EXCLUSIVE FRANCHISE AGREEMENT FOR THE  
COLLECTION AND HANDLING OF  
RECYCLABLES BETWEEN  
THE CITY OF SANTA CLARA AND  
LOS ALTOS GARBAGE COMPANY**

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HANDLING OF RECYCLABLES BETWEEN THE CITY OF SANTA CLARA  
AND LOS ALTOS GARBAGE COMPANY**

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**EXCLUSIVE FRANCHISE AGREEMENT  
FOR COLLECTION AND HANDLING OF RECYCLABLES  
BETWEEN THE CITY OF SANTA CLARA  
AND  
LOS ALTOS GARBAGE COMPANY**

THIS AGREEMENT FOR THE COLLECTION AND HANDLING OF RECYCLABLES ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by and between the CITY OF SANTA CLARA, a municipal corporation of the State of California, ("CITY"), and Los Altos Garbage Company, a California corporation organized under the laws of the State of California ("CONTRACTOR"). CITY and CONTRACTOR are individually referred to as "Party" and collectively referred to as the "Parties".

**RECITALS:**

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 *et. seq.*) ("AB 939"), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions to meet the goals and requirements of AB 939;

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), CITY has determined that in order to protect the public health and safety of the residents and business within the City of Santa Clara, it is appropriate to provide for recycling collection and disposal by a private waste hauler as an alternative to providing such services through public resources; and to that end has determined that an exclusive franchise be awarded to a qualified company for the handling of recyclable materials and other services to meet the goals and requirements of AB 939; which franchise can be appropriately integrated into and function as part of the solid waste system provided by CITY;

WHEREAS, CITY has determined pursuant to California Public Resources Code Section 40059 that as a matter of local concern it has separate exclusive franchises for Solid Waste (as defined herein) and Recyclable Materials, and this Agreement is for the exclusive franchise for the City's residential recycling program and collection;

WHEREAS, Public Resources Code Section 40059 permits CITY to impose terms and conditions on the award of a solid waste and/or recycling franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions;

WHEREAS, CONTRACTOR has represented and warranted to CITY that it has the experience, responsibility, and qualifications to provide Recyclable Materials handling services, as defined in Public Resources Code Section 49505 and as described herein;

WHEREAS, the City Council of CITY has determined that CONTRACTOR, by demonstrated experience, reputation and capacity is qualified to exclusively provide for the collection of recyclable materials within the residential areas of the corporate limits of CITY and to transport such recyclable materials to places of processing and disposal, which may be designated in accordance with this Agreement, and CITY and CONTRACTOR desire that CONTRACTOR be engaged to perform such services on the terms and conditions set forth in this Agreement;

WHEREAS, the City Council of CITY has determined that the public health, safety and well being of its residents require that recyclable materials collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be governed by and provided under an exclusive recyclable materials franchise agreement;

WHEREAS, the City Council of CITY requested proposals to provide services for the CITY's residential recycling program;

WHEREAS, the City Council of CITY has selected CONTRACTOR to provide to CITY a residential recycling program for such term, on such conditions and for the consideration as set forth in this Agreement; and,

WHEREAS, CONTRACTOR desires to provide to CITY such a residential recycling program and CONTRACTOR further represents that it has the expertise and resources necessary to provide such a Program to CITY.

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises contained and made in this Agreement, and subject to all the terms and conditions of this Agreement, the Parties agree as follows:

## **1. DEFINITIONS**

Affiliated Companies mean all businesses which are directly or indirectly related to CONTRACTOR by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in CONTRACTOR.

Applicable Law means all law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of Santa Clara, CITY, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, including AB 939, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and the Santa Clara County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise specifically limited.

Alternative Fuel Vehicle means a collection or supervisory vehicle that runs on a fuel other than gasoline or diesel. Alternative fuels include, but are not limited to, bio-diesel, electric, hybrid technology, compressed natural gas, or liquefied natural gas.

City means the City of Santa Clara and the collection areas as contemplated by this Agreement which include all residential areas and/or customers within City's jurisdictional limits.

City Manager means the City Manager of CITY and her/his designee. The City Manager is the authorized agent of CITY in enforcing the terms of this Agreement.

Container means a wheeled automated cart receptacle designed specifically for the storage and collection of Recyclable Material from Single-Family and Multi-Family Units, and which has a tight fitting lid. Containers also include one to eight cubic yard bin receptacles provided by CONTRACTOR to Customers for the storage and collection of Multi-Family Recyclable Material.

Curbside means at or near the curb and gutter in front of residential properties.

Customer means each person, owner or occupant, who resides in the City of Santa Clara, directly receiving recycling services from CONTRACTOR at Residential Premises.

Disposal Facility means a facility or facilities for disposing of Refuse and/or residue from a Processing Facility.

E-Waste means appliances, devices, and other objects containing electronic components, and includes (but is not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR's, televisions, printers, microwaves, and toasters.

Fiscal Year means the period from July 1, of one year to and including June 30 of the next ensuing year

Front-Loading Bins means industrial standard metal bins that are provided by CONTRACTOR for recycling at Multi-Family Unit Residential Premises, are one to eight cubic yards in capacity, and are serviced by front-load apparatus-equipped vehicles.

Hazardous Waste means any material, which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

- a. "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous

waste, or extremely hazardous waste by Section 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522;

b. Materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations;

c. Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

d. Materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder; and

e. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or disposal, the broader, more expansive definition shall be employed for purposes of this Agreement.

Hazardous Waste Facility means a facility which holds all required permits and approvals for acceptance of Hazardous Waste, and which disposes of or processes Hazardous Waste in accordance with Applicable Law.

Holiday shall mean and be limited to the following days on which collection shall be postponed and collected the following day:

- The date set aside in November for Thanksgiving Day;
- December 25 – Christmas; and,
- January 1 – New Year's Day

Multi-Family Unit Residential Premises means any building and/or structure, or portion thereof, in CITY which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having five (5) or more self-contained living units.

Municipal Code means the City of Santa Clara Municipal Code, as amended from time to time.



Notice of Violation means a notice left by CONTRACTOR or CITY on a container or front-loading bin that documents non-compliance with a particular set-out rule, address, and date.

Processing Facility means a facility or facilities for sorting and/or processing commingled or source separated Recyclable Materials.

Push/Pull Service means the driver of the collection vehicle pushes a Container or Front-Loading Bin to the service point, empties it, and then pulls it back to its original location. This service is charged to Customer on a price per foot moved basis, with the first ten (10) feet being complimentary.

Reasonable Business Efforts mean those efforts a reasonably prudent businessperson would expend under the same or similar circumstances in the exercise of such person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such person has undertaken to satisfy; provided that such Person would not incur a financial loss (other than time expended or unless otherwise compensated for such efforts herein) by reason of having expended or expending such efforts.

Recyclable Materials mean materials which have been discarded, thrown away or abandoned by the generator or owner thereof and are commonly collected in recycling programs in California, including, but not limited to:

- newspaper
- corrugated cardboard
- mixed paper
- glass bottles and jars
- beverage containers
- aluminum cans
- tin cans, and discharged metal spray paint cans
- steel and other types of kitchen scrap metals
- any plastic container or bag marked with a #1,#2,#3,#4,#5,#6 or #7 inside of three arrows
- compact fluorescent light bulbs
- used motor oil
- used motor oil filters

This list may be expanded to include other materials as may be mutually agreed upon by CITY and CONTRACTOR.

Recycling Coordinator means an employee of CONTRACTOR whose responsibilities include school and neighborhood presentation; outreach at community events, fairs and exhibits; customer communications; and other activities to help educate residents about recycling and waste reduction.

Refuse shall mean Solid Waste, other than Recyclable Material.

Residential Premises means and includes all Single-Family Unit Residential and Multi-Family Unit Residential sites located within CITY.

Single-Family Unit Residential Premises means any building, and/or structure, or portion thereof, in CITY which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having four (4) or less self-contained living units.

Single-Stream Recycling means all acceptable Recyclable Materials consisting of paper, plastics, metals, and glass that are co-mingled in the same Container or Front-Loading Bin for collection by CONTRACTOR. Motor oil, bagged motor oil filters, and large cardboard may also be set-out for collection outside of the approved Bin or Front-Loading Container.

Solid Waste shall mean all putrescible and nonputrescible solid and semi-solid wastes, including:

- Green Waste
- Construction and Demolition Waste
- garbage
- trash
- debris
- rubbish
- industrial wastes
- commercial wastes
- abandoned vehicles and parts thereof, including tires and wheel rims
- discarded home and industrial appliances
- dewatered, treated or chemically fixed sewage sludge which is not hazardous waste
- manure
- vegetable or animal solid and semi-solid wastes
- ash, except as provided below and
- other discarded solid and semi-solid wastes not otherwise defined in this Agreement.

Street means a dedicated way used for public travel.

## **2. GRANT OF EXCLUSIVE CONTRACT**

CITY grants to CONTRACTOR during the term of this Agreement the exclusive right and privilege to collect and transport Recyclable Material generated from areas in the CITY limit that are zoned for residential use to a Processing Facility. Recyclable Material from residential areas that is donated or sold is exempt from this agreement.

## **3. CONTRACTOR RESPONSIBILITY**

CONTRACTOR agrees to perform all of its obligations under this Agreement for the term of this Agreement. CONTRACTOR shall furnish all of the labor and equipment necessary for the collection, processing and recycling of all Recyclable Material subject to the terms, conditions and provisions of this Agreement. CONTRACTOR represents that it has the professional and technical personnel required to perform the services in conformance with such

terms, conditions and provisions of this Agreement. CONTRACTOR shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

#### **4. TERM OF AGREEMENT**

a. Commencement.

This Agreement shall commence upon the Effective Date of this Agreement.

b. Date CONTRACTOR Assumes Collection and Handling Services.

CONTRACTOR shall assume responsibility and commence all collection and processing of Recyclable Materials, as described in this Agreement, as of Monday, December 7, 2009, unless agreed upon otherwise in writing, with CITY.

c. Effective Date CONTRACTOR Ceases Collection and Handling Services.

CONTRACTOR shall end responsibility for collection and processing of Recyclable Materials, as described in this Agreement, as of Friday, January 10, 2020, unless agreed upon otherwise in writing with CITY.

d. Termination Date.

Agreement shall continue in effect until all terms and conditions of Agreement are complete, and CONTRACTOR requests, and receives "Notice of Termination" in writing from CITY.

#### **5. SCOPE OF SERVICES**

a. General

CONTRACTOR shall provide Single-Stream Recyclable Material containers, collection, transportation, processing and disposal services within CITY in accordance with the terms of this Agreement. CONTRACTOR shall not be required to provide such collection, transportation, processing and disposal services for any other type of waste under this Agreement, except to the extent provided herein. Unless otherwise approved by CITY, only Containers and Front-Loading Bins are authorized to be used by Customers for the deposit of Residential Recyclable Material.

While engaged in activities authorized or required by this Agreement, CONTRACTOR's employees and agents shall be attired in suitable and acceptable uniforms mutually approved by CITY and CONTRACTOR. All CONTRACTOR's employees shall make collections as reasonably quiet as possible and shall avoid unnecessary disturbance. CONTRACTOR and its employees shall not trespass or loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. CONTRACTOR shall exercise due care when handling Containers and shall not cause the Containers to be damaged or dropped during collection services. CONTRACTOR's employees shall replace

Containers upright once emptied and shall clean up any contents spilled during the collection process, including Recyclable Material spilled prior to the arrival of CONTRACTOR's employees.

CONTRACTOR shall be responsible for any damage to any property if proven to be the result of the CONTRACTOR's vehicles exceeding the legal maximum weight limits of the State of California or the CONTRACTOR's negligent operation of the vehicles. CONTRACTOR shall be responsible for damage to public and private utilities, and shall repair or replace such damaged utilities, if proven, to the satisfaction of the CITY, to be caused by the inattention, carelessness or negligence of CONTRACTOR.

CITY shall provide CONTRACTOR with a copy of a map that details the boundaries of each collection day by February 1, 2009. CONTRACTOR shall furnish to CITY one copy of a map showing the boundaries of each collection route for all customers by October 15, 2009. CITY reserves the right to change assigned collection day boundaries at its discretion. Any route changes proposed by CONTRACTOR shall be submitted, in writing, for CITY approval at least sixty (60) days prior to the proposed date of implementation. CITY reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing CONTRACTOR from driving an established collection route, in which event CONTRACTOR will adjust its route without cost adjustment therefor. CITY reserves the right to conduct audits of CONTRACTOR's collection routes. Upon request, CONTRACTOR shall provide CITY with route maps detailing all collection routes.

b. Residential Service

i. Single-Family Unit Residential

CONTRACTOR shall collect single stream Recyclable Material placed in CONTRACTOR-provided wheeled automated containers placed out at the curbside for collection once a week on the same collection day as garbage and Clean Green service, regardless of weather conditions.

The default size Containers provided by CONTRACTOR shall be 64 gallons in size unless an alternate (96-gallon) or (32-gallon) size is requested by a Customer. CONTRACTOR is required to keep a stock of containers on hand and provide Customers the size container desired upon request. Customers requesting a different size Container shall not receive a discount, reduction, or increase in rates for service. CONTRACTOR shall maintain and provide CITY a list, monthly, of names and addresses of those residents who received different size containers than 64 gallons in size.

Containers to be used shall be standard configuration wheeled automated loading containers having a design, color (blue), sizes, and specifications acceptable to the CITY. The recycling containers shall display the name, address and phone number of CONTRACTOR, the type of Recyclable Material to be placed therein, and such other information as is agreeable to CITY and CONTRACTOR.

All Recyclable Materials shall be placed in Containers except for motor oil, motor oil filters, large cardboard, and compact fluorescent bulbs. Customers shall be directed to set out motor oil in one-gallon, screw-top containers that they provide. Customers shall be directed to place drained motor oil filters and compact fluorescent light bulbs into separate slide-locking, clear Ziploc-type plastic bags on top of their Container. Customers shall be directed to break down large cardboard containers and stack them adjacent to their Container. The driver of the collection vehicle will need to manually load these Recyclable Materials onto the vehicle. CONTRACTOR shall not charge CITY or Customer any additional fee for this service.

Containers shall be placed at or near the curbside prior to CONTRACTOR'S normal weekly collection time. CONTRACTOR shall only collect CONTRACTOR-provided Containers which conform to the provisions of this Agreement. CONTRACTOR is required to do periodic inspection of container contents as required in Section 7c to reduce contamination. CONTRACTOR must leave Customer a Notice of Violation on their Container that documents the reason service was not provided.

CONTRACTOR shall not receive compensation, including sign-up or similar charges, from Single-Family Unit Residential Customers in addition to the rates set forth in Exhibit "A", except for Special Services involving Push/Pull, requested Multi-Family bin cleaning services, customer requested extra driver time call-outs, lock jam bin installations, and contamination charges.

ii. Multi-Family Unit Residential

CONTRACTOR shall collect Single Stream Recyclable Materials which have been placed, kept or accumulated in Front-Loading Bins or Containers at Multi-Family Unit Residential Premises. Participation in the Multi-Family Unit Residential Recycling Program is currently by subscription only, and it is the responsibility of CONTRACTOR to help expand the program to those Multi-Family complexes that can be reasonably served economically as determined by CONTRACTOR and CITY. Multi-Family Unit Residential Customers or owners may arrange with CONTRACTOR for Container service in lieu of Bin service. If CONTRACTOR disagrees with a Customer regarding the Customer's preference for Container service, CONTRACTOR shall promptly notify the CITY in writing of such disagreement. If the CITY determines that Container service would be appropriate, the CITY may authorize Container service in lieu of Bin service.

Bin Containers to be used shall be standard configuration having a design, color, and specifications acceptable to CITY. The recycling containers shall display the name, address and phone number of CONTRACTOR, the type of Recyclable Material to be placed therein, and such other information as is agreeable to CITY and CONTRACTOR.

Front-Loading Bins and Containers shall be placed at or near the curbside, or in a bin enclosure prior to collection. Collection shall be once a week on the same day as garbage collection service.

CONTRACTOR is required to manually move Front-Loading Bins and Containers up to ten (10) feet in order to empty it into the truck without charging the Customer. CONTRACTOR

and Customer may mutually agree to establish a Push/Pull service at the rates set forth in Exhibit "A". CONTRACTOR shall not be required to collect Containers which do not conform to the provisions of this Agreement. CONTRACTOR must leave Customer a Notice of Violation on their Container that documents the reason service was not provided.

CONTRACTOR is responsible for maintaining a reasonable business effort in the marketing of the recycling program for Multi-Family Unit Residential Customers. Any agreements for recycling services must be signed by the property owner or agent for the complex. CONTRACTOR must provide CITY a monthly report of all complexes serviced that includes the following information for each: name of complex, address of complex, and number of units in complex.

CONTRACTOR is not required to provide used motor oil, oil filter, or compact fluorescent light bulb collection and recycling service at Multi-Family Unit Residential Premises.

iii. Hours of Collection

Collection service at Residential Premises shall be Monday through Fridays, and not start before 7:00 a.m. or continue after 7:00 p.m., subject to change by resolution of the City Council. Collection services to Residential Premises shall not take place on Sundays, but may be on Saturdays due to observed Holidays, as herein defined, and collections thereafter occurring one day late that week.

iv. Customer Obligations

CITY shall, by ordinance, resolution or otherwise, require that all Customers receiving Recycling Containers from CONTRACTOR for the purpose of the residential curbside recycling program shall be used only for such purposes and that said Customer shall be responsible for any damage, destruction or loss of such recycling containers.

CITY shall, by ordinance, resolution or otherwise, require that all Customers receiving services pursuant to this Agreement store and set out such Recyclable materials to be collected by CONTRACTOR in the following manner:

(1) The Recycling Containers containing Recyclable Materials shall be placed in gutter at the curb in front of the Customer's residence, or other location as directed by CITY, on the regular collection day by 7:00 a.m.

(2) Recycling Containers shall not be stored upon public streets at any time except for the date during which CONTRACTOR is to make collections from such premises.

c. Container Purchase and Distribution

CONTRACTOR shall purchase and deliver at CONTRACTOR's sole cost and expense all Containers and bins necessary to provide residential recycling services to Customers in the CITY. The ownership of the Recycling Containers shall be and remain with CONTRACTOR. Single-Family Unit Residences shall be provided a Container, approximately 64 gallons in size,

as the default container. After initial issue of Containers, Customers may request to switch to a larger (96-gallon) or smaller (32-gallon) Container instead at no additional charge. CONTRACTOR shall make reasonable efforts to exchange Container sizes within ten (10) business days of receiving requests. If request cannot be fulfilled, CONTRACTOR to notify CITY of Plan to complete requests within period acceptable to CITY.

CONTRACTOR shall repair and maintain in a reasonable and serviceable condition to CITY all provided Containers and Bins for the duration of the Agreement. Containers which, due to normal use, normal exposure, or manufacturing defects, become unusable shall be replaced at no charge. In the event that recycling Containers need to be replaced because of loss, theft, damage or destruction, CONTRACTOR shall replace such recycling containers at no cost to CITY or customer. With CITY's approval, CONTRACTOR may seek reimbursement from parties who may have stolen, vandalized, or destroyed said Containers or Bins.

CONTRACTOR must contact all Single-Family and Multi-Family Unit Resident Customers by September 1, 2009 to inform them of the new single-stream recycling program and educate and advise these Customers of their Container and Front-Loading Bin options. All customers shall receive from CONTRACTOR at time of Container delivery, a written brochure approved by CITY, explaining the new single-stream recycling program and regulations. CONTRACTOR must submit a "Container and Brochure Distribution Plan" that must be approved by CITY by August 1, 2009. All Containers, Front-Loading Bins, and Brochures must be delivered to all residential Customers by December 4, 2009.

The 18-gallon plastic bin recycling containers that Single-Family customers are currently using are owned by the CITY. As part of the commencement of service, the CONTRACTOR shall collect any and all of these bins the customers do not want. CONTRACTOR to submit Plan, for CITY's approval, to recycle or reuse these containers. Costs for collecting, handling and processing these Containers, and any value for these materials, shall be CONTRACTOR's sole responsibility.

At the end of the collection and handling services term of the Agreement, CONTRACTOR shall be responsible for the disposition and removal of all Containers. Removal Containers shall be reused or recycled per plan submitted, and approval by CITY at least ninety days prior to end of cessation of collection and handling services term. Completion of this Plan is necessary prior to CITY issuing Notice of Termination of Agreement.

d. Marketing of Recyclable Materials

i. Discretion of Marketing CONTRACTOR shall take ownership of all Recyclable Material stored in Containers or Front-Loading Bins. CONTRACTOR may market Recyclable Materials at its discretion and keep all profits associated with the sale of said Recyclable Materials to a Processing Facility.

ii. Processing

(1) Facility Selection CONTRACTOR shall transport and deliver all Recyclable Materials collected within the CITY to a Processing Facility permitted by all

applicable regulating agencies of the State of California or Federal Government to collect, store, process and retransport for sale such Recyclable Materials.

(2) Weighing and Record Requirements CONTRACTOR shall ensure that, at a minimum, all materials shall be weighed upon delivery to a Processing Facility, and all weight and related delivery information recorded. CONTRACTOR shall make arrangements with the Processor to allow the CITY to review during such facility's normal operating hours any recordings or video of tipping. CONTRACTOR shall ensure that all scales shall be weigh master certified and regularly maintained to ensure reliability and continued functioning.

(3) Recyclable Materials Specifications CITY is not responsible for the quality of Recyclable Materials delivered to or rejected by the Processing Facility. CITY makes no warranty, either express or implied, with respect to the Recyclable Materials, including but not limited to warranties of merchantability and fitness for a particular purpose.

(4) Disposal of Residue CONTRACTOR shall ensure that disposal of any and all residue remaining from the processing of Recyclable Materials and any non-processable materials is in accordance with Applicable Law.

iii. Indemnification To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by CONTRACTOR's breach of or noncompliance with a provision of this Agreement, CONTRACTOR agrees to protect and defend CITY, with counsel selected by CITY, and to indemnify and hold harmless CITY from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in the California Public Resources Code are not met by the CITY with respect to the Recyclable Material collected by CONTRACTOR under this Agreement. Upon receipt from the California Integrated Waste Management Board of a stipulated order of noncompliance with the diversion goals, which is at least partially caused by CONTRACTOR's breach of or noncompliance with a provision of this Agreement, the CITY may require CONTRACTOR to provide a performance bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) until such time as compliance is attained.

If the CITY finds that additional programs are necessary to meet any required diversion goals, the CITY may require proposals for additional diversion programs to meet the diversion requirements. If necessary, CITY and CONTRACTOR shall enter into good faith negotiations, but if agreement regarding programs and/or rate adjustments cannot be reached, the matter shall be referred for non-binding mediation as set forth herein.

iv. Anti-Scavenging Laws CONTRACTOR shall cooperate with CITY in enforcing anti-scavenging laws.

e. Collection on Holidays

If the day of collection on any given route falls on a Holiday or a day on which the Disposal Facility utilized by CONTRACTOR is closed, CONTRACTOR may provide collection service for such route on the next workday following such holiday (including Saturdays for regularly scheduled Friday collections) or Disposal Facility closure day or shall provide such



collection service on such Holiday or Disposal Facility closure day, except that CONTRACTOR shall never provide collection service (unless in case of emergency where such pickup is authorized by CITY) on New Year's Day, Thanksgiving Day or Christmas Day.

f. Provision and Replacement of Containers and Bins

CONTRACTOR shall replace existing Containers and Front-Loading Bins with clean and freshly painted replacements as often as deemed necessary by CITY and requested by CITY, but in no event more often than once per Contract Year at no cost to CITY or any Customer. All cleaning of Front-Loading Bins and Containers shall be completed in full compliance with all Applicable Laws, including any requirements of the National Pollution Discharge Elimination System.

Upon request of any Customer for a replacement Container, or upon request of CITY for a replacement Container for any Customer, CONTRACTOR shall provide such Container without cost to the Customer or to CITY. CONTRACTOR must attach a tag to the Container or Front Load Container for purposes of notice to the Customer one (1) full week in advance if removal is directed by CITY.

g. Graffiti Removal

CONTRACTOR must remove graffiti vandalism from Containers and Front-Loading Bins within four (4) business days of notification.

**6. ADDITIONAL SERVICES PROVIDED BY CONTRACTOR**

a. City Facilities and Events Recycling Collection

CONTRACTOR shall, upon written request by CITY, provide Containers, as necessary, and related collection, transportation and recycling services at CITY Facilities for special events at no charge. Written request by CITY must be submitted to CONTRACTOR no less than fifteen (15) days prior to the requested delivery date of Containers. Special events shall include, but are not limited to, the City's annual Arbor Day Celebration, 4<sup>th</sup> of July Celebration, and Art & Wine Festival. CONTRACTOR shall provide a Recycling Coordinator to work with the organizer of each event to develop a specific diversion plan tailored to each specific event. Once parameters of the event are determined, CONTRACTOR will provide proper Containers for each special event with the purpose to maximize diversion of recyclable material. CONTRACTOR shall also supply and staff an information booth at each Special Event that promotes recycling or other waste diversion activities. Upon completion of each Special Event, CONTRACTOR shall submit a report that documents the number of Containers staged and the weight of the material collected.

b. Special Services

CONTRACTOR shall offer to its Customers the following Special Services for additional service fees. The services detailed in Section 6.b shall be billed to Customer by City. Contractor must notify City Finance Department when these Special Services are rendered so Customer can

be billed. City shall pay Contractor for Special Services rendered on a monthly basis. The rates to provide Special Services are detailed in Exhibit "A" – Schedule of Tariffs, and shall be eligible for annual adjustment, as described in Section 7.b of this Agreement.

- i. Manual "push-pull" service for Front-Loading Bins, including opening and closing of enclosure doors. Push-Pull service may be charged on a price per foot moved basis if the driver must move it more than ten (10) feet to service it.
- ii. One-time charge for front-loading bin cleaning service.
- iii. Driver-time reimbursement for delays lasting over fifteen (15) minutes caused by blocked access ways on the property or to level and/or manually reload containers or front-loading bins.
- iv. Lock-jam bin installations.
- v. Contaminated Container Collection Charge

In addition to the exclusions set forth in Section 2 to the exclusive rights and privileges granted to CONTRACTOR in this Agreement, nothing in this Section 6.b shall prohibit a Customer from calling upon a third party to render a specific Special Service in the event that CONTRACTOR, following that Customer's request for CONTRACTOR to perform a specific Special Service, is either unwilling or unable to perform that Special Service.

For special services not billed by CITY, CONTRACTOR shall bill and receive fees for performance of Special Services as agreed upon in separate contracts between CONTRACTOR and each Customer requesting such Special Service.

c. Hazardous Waste

CONTRACTOR shall use Reasonable Business Efforts to ensure the delivery of Hazardous Waste to a Hazardous Waste Facility, and to screen, identify and prevent against the disposal of Hazardous Wastes at any Processing Facility or Disposal Facility used by CONTRACTOR under this Agreement. If CONTRACTOR inadvertently delivers materials to any Processing Facility or Disposal Facility which comprise Hazardous Waste and CONTRACTOR cannot or fails to remove it, CONTRACTOR shall arrange for its proper disposal in accordance with Applicable Law. CONTRACTOR shall use Reasonable Business Efforts to recover the costs of such disposal from the Customer which generated such Hazardous Waste and failed to identify it for collection as part of the Household Hazardous Waste pickup program (if one is in operation pursuant to this Agreement, as it may be amended), if the Customer can be identified, and charge such cost to such Customer. If CONTRACTOR delivers Hazardous Waste to any Processing Facility or Disposal Facility, CONTRACTOR shall promptly notify the City, the local fire department, and the Santa Clara County Health Department, providing the name, address, and telephone number of the collector and the facility or premises from which the Hazardous Waste was collected, the type and quantity of the Hazardous Waste, and the location and method of final disposition of Hazardous Waste.

d. Indemnification

CONTRACTOR shall indemnify, defend with counsel approved by CITY, protect and hold harmless the CITY from and against all claims, actions, damages or liabilities paid, incurred or suffered by, or asserted against, the CITY arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where CONTRACTOR delivers, stores, processes, recycles, composites or disposes of materials or wastes to the extent that such liabilities are caused by CONTRACTOR's negligence or willful misconduct. Nothing in this subsection shall be construed to require CONTRACTOR to indemnify the CITY for liabilities caused by the sole negligence of the CITY.

e. Marketing of Multi-Family Unit Recycling Program

CONTRACTOR shall contact the property owner or manager for every Multi-Family Unit residential complex that does not have recycling services at least once a year to inquire whether they are interested in receiving recycling services. CONTRACTOR must document the contact with each property owner or manager and submit a summary report to CITY that covers each fiscal year by July 31<sup>st</sup> of each year. This report shall be titled "Contact With Multi-Family Unit Complexes Without Recycling Services" and shall contain the following information for each complex: name of complex, address of complex, name of contact person, contact person title, contact person phone number, and reason why complex is not participating in the recycling program, and recommendations on making complex servicable.

f. Community Relations Plan

CONTRACTOR shall use Reasonable Business Efforts to outreach and educate the public on the importance of recycling and separating Solid Waste in order to achieve maximum waste diversion. CONTRACTOR shall develop a recycling brochure that describes the new recycling program and mail it out to all Customers. The recycling brochure must be approved by CITY prior to printing. CONTRACTOR shall be responsible for all costs associated with the design, printing, and delivery of the recycling brochure. CONTRACTOR must submit the recycling brochure to the CITY for review by October 12, 2009. CONTRACTOR must deliver brochure to Customers by December 4, 2009. CONTRACTOR's recycling brochure shall be updated and reprinted as necessary to maintain reasonable supply for business and community-related purposes. CONTRACTOR shall supply CITY with brochures for activities and customer requests.

In addition, CONTRACTOR is required to staff a community relations booth that promotes recycling at the following annual CITY sponsored events at no charge: Arbor Day Festival; City Hall Open House (when scheduled); and Fourth of July Celebration. CITY will notify CONTRACTOR in writing of these upcoming events at least thirty (30) days in advance.

g. Inspection of Containers

CONTRACTOR shall assign an employee(s) to inspect Containers for contamination at least a total of ten (10) hours a week. CONTRACTOR's inspector(s) shall check containers on all routes at least once per a year. CONTRACTOR must submit a monthly report, titled "Container Inspection Report" due by the fifteenth detailing the routes that were inspected and addresses where a Notice of Violation were left. CONTRACTOR is required maintain a database of Notices of Violation issued that goes back at least one full year. CONTRACTOR shall notify CITY of customers that have had multiple violations in the last one-year period so appropriate enforcement action can be taken. CITY may also inspect Container contents at any time and issue Notice of Violations and/or Citations. A separate collection charge which shall be billed and collected by CONTRACTOR may be assessed to Customer to service a contaminated Container.

h. Customer Service Phone Line

Contractor shall staff a telephone information and complaint service. All calls received must be documented and kept on file. The dedicated customer support telephone service must be staffed with an employee(s) from 7:30 a.m. to 4:30 p.m. on all business days.

i. Backyard Service for Physically Disabled Single-Family Unit Customers

Contractor shall provide backyard service for physically disabled Customer(s) at no cost to the City. Customer is required to provide Contractor with a doctor's certification that states that Customer is physically unable to transport his/her Container to and from the Curbside. Contractor will be required to go onto Customer property to retrieve Containers, empty Containers, and return Containers to their original storage location for all Backyard Service Customers.

j. Environmental Day Events

CONTRACTOR shall provide all necessary equipment and staffing to conduct two Environmental Day events for City of Santa Clara residents at its facility located at 650 Martin Avenue. There shall be no charge to CITY or Santa Clara residents to utilize these events. Environmental Days will be held on the first Saturday in March and third Saturday in October each year and shall be open for no less than six (6) hours. CONTRACTOR shall be responsible for obtaining any and all necessary permits to conduct Environmental Days. CONTRACTOR may, at its discretion, require attendees to make an appointment to utilize an Environmental Day event.

Each Environmental Day shall include a document destruction component for Santa Clara residents to destroy all paper documents, binders with clamps, computer disks, magnetic disks, magnetic tapes, transparencies, and video cassettes. Universal waste and electronic waste may be dropped off for recycling at each Environmental Day event. Other items which shall be accepted for drop-off for recycling and reuse shall include plastic play structures, toys, and clothing. Upon the completion of each Environmental Day, CONTRACTOR shall submit to City a report that summarizes the number of Santa Clara residents that utilized the service, and

the weights of materials dropped off by category.

CONTRACTOR shall submit a plan to market the next year's Environmental Day events by October 15<sup>th</sup> of the preceding year. Language and logos in the marketing plan may be used to promote the Environmental Day events on the City's website, cable channel, calendar, or other written publications.

k. Classroom Presentations

CONTRACTOR shall provide a Recycling Coordinator to visit classrooms in City of Santa Clara based schools each year to make presentations that encourage source reduction, increased recycling participation, and reduced Recyclable Materials contamination. CONTRACTOR shall make a minimum of six (6) Classroom Presentations per year. An annual summary of dates and locations of Classroom Presentations for the previous year shall be submitted to CITY by March 31<sup>st</sup> of each year.

l. Coats For Kids Program

On an annual basis, CONTRACTOR shall sponsor a Coats For Kids program in the City of Santa Clara. Program shall collect coats at designated locations throughout the City. Coats will be given to local schools and/or non-profit agencies for sorting and distribution.

**7. BILLING AND PAYMENTS**

a. Collection

CITY will pay to CONTRACTOR the amount set forth in Exhibit "A", titled "Schedule of Tariffs". The rates can be adjusted in accordance with the provisions set forth in Section 8(b) of this agreement. No additional payments shall be sought and/or accepted by CONTRACTOR either from CITY or any other person for any of CONTRACTOR'S services in carrying out the terms of this agreement, except for the revenues which CONTRACTOR receives for the sale of Recyclable Materials, and all expenses incurred therein shall be at CONTRACTOR'S sole expense. CITY shall be responsible for billing and collection of the charges to Customers for the residential recycling program.

b. Annual Adjustments to Tariffs

The rates set forth in Exhibit "A" – Schedule of Tariffs shall be adjusted as of July 1 of each year of this agreement, beginning July 1, 2011. The Schedule of Tariffs will be adjusted in the same percentage as the percentage of increase or decrease, if any, in the Consumer Price Index over the previous year, to be determined as follows:

i. The "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Area, (herein "CPI") 1982-84=100 as published monthly by the United States Department of Labor, Bureau of Labor Statistics;

ii. The percentage increase or decrease, if any, shall be determined by the percentage increase or decrease in the index for the most recent month of December over the same index for the month of December of the previous year. In the event of a partial year during the term of this Agreement, the percentage change to be effective as of July 1 of said year shall be prorated for the months that the term of this Agreement has actually been in effect;

iii. An index based on CPI 1982 - 84 = 100 index levels, for the twelve (12) month period ending December 2009 is established as the accepted initial base index for this agreement.

iv. CONTRACTOR also has an option of annually filing a request (along with supporting documentation) with CITY by December 1 of each year for an adjustment to rates and charges to recover the pro-rata share of increased costs arising from new or amended laws or regulations or new or increased taxes/fees, imposed by a governmental agency having jurisdiction.

v. Any such adjustment to the rates set forth in this section shall become effective only upon written approval of City Council of CITY.

c. Time of Payment and Disputes

During the full term of this Agreement, all amounts due hereunder shall be paid monthly by CITY to CONTRACTOR on or before the fifteenth (15<sup>th</sup>) day of each month, and shall cover services rendered during the preceding month. CONTRACTOR shall review monthly payment received from CITY and shall respond in writing to CITY of any disputed payment amounts within 60 days of receiving payment, after which payment will be considered full and complete for said services.

**8. COLLECTION EQUIPMENT AND PRACTICES**

a. Number and Maintenance of Vehicles

i. CONTRACTOR shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which CONTRACTOR is responsible under this Agreement. CONTRACTOR shall ensure that primary collection vehicles are not over ten (10) years of age for this Agreement and no back-up collection vehicle will ever be more than fifteen (15) years of age. If a breakdown or unforeseen circumstance requires CONTRACTOR to use a vehicle that is greater than ten (10) years of age to adequately service the day's collection routes, CONTRACTOR must notify CITY verbally and receive approval to send the vehicle on a collection route. For purposes of this paragraph, a vehicle's "age" shall consist of the age of the older of its chassis and body. All vehicles shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, in good body condition, and in good repair. CONTRACTOR shall keep all collected materials covered during transportation, and shall be regularly inspected and certified by the Santa Clara County Health Department at the sole expense of Contractor. Such vehicles shall be kept

and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid.

ii. All collection vehicles operated by CONTRACTOR shall be newly painted and detailed in a uniform color to enhance the visibility of the vehicle and distinguish them from other authorized collectors. Such vehicles shall be numbered in consecutive sequence and shall have the CONTRACTOR's name, in-service telephone number, place of business, and the number of the vehicle painted in letters of contrasting color on each side and rear of each vehicle. CONTRACTOR's name, phone number and vehicle number shall be visibly displayed on its vehicles in letters and figures no less than four inches (4") high. CITY's name shall be visibly displayed on all vehicles used by CONTRACTOR under this Agreement, in letters no less than six inches (6") high. Said rear number, and any cautionary message or device shall be readable from a distance of one hundred (100) feet. Vehicles shall be cleaned and repainted as necessary to maintain a reasonable, acceptable condition to CITY.

b. Compliance With Applicable Air Pollution Control Laws

CONTRACTOR shall maintain all equipment and conduct all business activities in accordance with all applicable air pollution control laws. Upon request from CITY, CONTRACTOR shall provide records of all collection vehicles in service in the CITY, including fuel source and engine and chassis numbers. In addition to any indemnification obligations set forth elsewhere in this Agreement, CONTRACTOR shall defend, indemnify, and hold harmless CITY against any fines, penalties, losses, or claims arising out of CONTRACTOR's failure to comply with this paragraph.

c. Clean Collection Practices

CONTRACTOR shall not cause or permit private property or CITY streets or property to be littered with debris because of CONTRACTOR's activities under this Agreement. CONTRACTOR shall clean up any debris in the immediate vicinity of any Container, Front Loading-Bin, and/or storage area that results from collection services under this Agreement. In the event of repeated litter not caused by CONTRACTOR directly, CONTRACTOR shall first notify the Customer and, if litter continues, CONTRACTOR may request the CITY's assistance to rectify the situation.

d. On-Board Vehicle Computer System

CONTRACTOR shall equip all collection vehicles with hardware and software that delivers automated service verification, including wireless data transfer system, global positioning system, route management system, and expandable to include other features such as digital cameras, scales and RFID. Equipment shall be at a minimum, capable of reporting customers and addresses serviced, set-out problems, cart damage, and contamination. CONTRACTOR must have the ability to convert and wirelessly download customers serviced and address data to a third party CITY contracted company for the purposes of recycling education and incentive program(s), which may be implemented during the term of the agreement.

e. Communication System

CONTRACTOR shall equip each vehicle and central dispatch office with a radio communication system or cellular phone equipment to provide communication ability. CONTRACTOR shall instruct collection route supervisors and drivers to be aware of and report scavenging, suspicious activity, fires, and other serious occurrences to CONTRACTOR's dispatch office, or 911.

f. Alternative Fuel Collection Vehicles

CONTRACTOR shall use only Alternative Fuel collection and supervisor vehicles for all work associated with AGREEMENT. CONTRACTOR shall fuel collection vehicles with B-40 blend biodiesel or higher and supervisor vehicles will be hybrid vehicles. CONTRACTOR must obtain CITY approval to use any other type of Alternative Fuel Vehicle for this AGREEMENT. Contractor will be subject to liquidated damages set forth in Section 13.b for failure to use alternative fuel for collection vehicles and supervisor vehicles used specifically for this AGREEMENT.

**9. PUBLIC ACCESS TO CONTRACTOR**

a. Local Office and Regular Hours

CONTRACTOR'S office hours shall be, at a minimum, from 7:30 a.m. to 4:30 p.m. Monday through Friday, except federal holidays. A representative of CONTRACTOR shall be available during office hours for communication with the public at CONTRACTOR'S principal office. The representative shall, at a minimum, provide route maps and service information to the public. CONTRACTOR shall also maintain a telephone number for off hour message and voice recording when the local office is closed. CONTRACTOR shall have a representative or answering service available for emergency contact by CITY during all hours other than normal office hours.

b. Service Complaints and Dispute Resolution

All service complaints received by CITY from Customers shall be directed to CONTRACTOR. CONTRACTOR shall record all complaints received (including date, name, address, and nature of complaint), and action taken, or other disposition. CONTRACTOR shall make all such records available for inspection by the CITY during normal business hours, upon demand by the CITY. CONTRACTOR agrees to use its best efforts to resolve all such complaints within the business day next following the date on which such complaint is received.

If CONTRACTOR misses a scheduled pickup, it shall provide a special pickup within twenty-four (24) hours (Sundays and Holidays excepted) of notice thereof to CONTRACTOR at no charge to Customer or CITY.

CONTRACTOR shall provide a monthly summary report in writing to the CITY of types and numbers of missed service, complaints, and disputes.



In the event that the CITY determines that CONTRACTOR has failed to render performance in accordance with the requirements of this Agreement, CITY may assess damages against CONTRACTOR and reduce payment otherwise due to CONTRACTOR accordingly. CONTRACTOR shall in all cases be given a reasonable opportunity to remedy the defect in performance prior to such assessment of damages.

c. Customer Information

CONTRACTOR shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by Applicable Law, the CITY or a court of competent jurisdiction.

**10. OWNERSHIP OF RECYCLABLE MATERIAL**

All Recyclable Material collected pursuant to this Agreement shall be the property of the Customer until placed in a Bin or Container for collection pursuant to this Agreement. Except as provided in the next paragraph, ownership of the Recyclable Material shall transfer to CONTRACTOR once it is deposited in a Container or Front-Loading Bin belonging to CONTRACTOR. CONTRACTOR is granted the right to collect, transport, process, recover, recycle, retain, market all Recyclable Material and retain all benefits or profits resulting therefrom. All Recyclable Material shall be collected, transported, and processed in accordance with federal, state and local law.

This Agreement shall not prohibit any person from selling Recyclable Material or giving Recyclable Material away to persons or entities other than CONTRACTOR prior to such Recyclable Material being placed in a Front-Loading Bin or Container for collection by CONTRACTOR. However, in either instance, the Recyclable Material must be segregated from and not mixed with Refuse and the seller/donor may not pay the buyer/donee any consideration for collecting, transporting, processing or recycling such Recyclable Material. Notwithstanding any other term or provision of this Agreement to the contrary, materials shall be deemed to constitute solid waste within the meaning of California Public Resources Code Section 40191, and regulated accordingly, whether or not said materials may be potentially recyclable, in all cases where the material is mixed or commingled with other types of solid waste, or where a fee, charge, or other form of consideration, regardless of amount, is directly or indirectly solicited or received from the generator in exchange for collection, removal, transportation, storage, processing, handling or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent, or affiliate of the provider of such service. As used herein, "generator" includes, without limitation, a property owner, or occupant.

In consideration of the foregoing provisions with respect to ownership of Recyclable Material, CONTRACTOR shall maintain all records required by state and federal law regarding source generation, recycling and disposal of said materials, and in a form acceptable to CITY, and shall provide same to CITY upon request, but not less than once quarterly.

## 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE BOND

### a. Indemnification of CITY

CONTRACTOR agrees that it shall indemnify and hold harmless CITY, its officers, officials, employees, agents, assigns and any successor or successors to CITY's interest, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of every kind and description, arising or resulting from: (i) the acts or omissions of CONTRACTOR, its agents, employees or subcontractors, in exercising the privileges granted to it by this Agreement; and (ii) the failure of CONTRACTOR, its agents, employees and/or subcontractors, to comply in all respects with the provisions and requirements of this Agreement. CONTRACTOR shall, upon demand of CITY, at CONTRACTOR'S sole cost and expense, defend with an attorney chosen by CITY to defend CITY, its officers and/or employees against any and all claims, actions or suits in any legal proceedings, (whether judicial, quasi-judicial, administrative or legislative in nature) brought against CITY, its officers and/or employees arising or resulting from those situations described in (i) and (ii) above.

CONTRACTOR shall indemnify, defend with an attorney selected by CITY, protect and hold harmless CITY, its officers, officials, employees, agents, assigns and any successor or successors to CITY's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, CITY or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where CONTRACTOR stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to and shall be construed to operate as an agreement pursuant to Section 107(c) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9067(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify CITY from liability.

The foregoing shall not apply to the extent that any costs and damages arise out of the active sole negligence or willful misconduct of CITY, its agents, employees, officers and contractors. CONTRACTOR shall have an affirmative duty to select for disposal of CITY's Recyclable Materials only those disposal facilities which comply with state and federal law.

This Section shall survive the expiration of the period during which collection services are to be provided under this Agreement.

Notwithstanding the provisions of this Section, CONTRACTOR shall not be required to appear or act in any litigation based solely upon the negligent acts or omissions of CITY.

b. Insurance

CONTRACTOR shall obtain and shall require its subcontractors to obtain insurance of the types and in the amounts described fully in Exhibit "B" and which are satisfactory to CITY.

c. Performance Bond

Prior to execution of this Agreement, CONTRACTOR shall deposit with CITY either a letter of credit or a performance bond (collectively referred to as the "Performance Bond") in the amount of \$250,000. The Performance Bond shall serve as security for the faithful performance of CONTRACTOR of all of the provisions and obligations of this Agreement. The Performance Bond shall contain terms acceptable to CITY. If CONTRACTOR deposits a letter of credit with CITY, interest, if any, relating to any cash deposits that may exist with regard to that letter of credit shall accrue to CONTRACTOR.

**12. TERMINATION AND OTHER REMEDIES**

a. Termination

CITY may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement at any time as a result of a violation of this Agreement by CONTRACTOR by giving written notice to CONTRACTOR of such termination and the violation, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon receipt of a notice of termination, CONTRACTOR shall have sixty (60) days to cure or correct the violation of this Agreement noted by CITY. During the 60-day cure period, CONTRACTOR shall have the right to a hearing before the City Council to discuss the violation and proposed termination, provided that the request for a hearing is made in sufficient time to schedule a hearing at a regular meeting of the City Council falling within the 60-day cure period. If the violation has not been cured or corrected within the 60-day cure period, CITY may proceed with the termination of this Agreement on the noticed date. Upon termination, CONTRACTOR shall be compensated only for those Services which have been adequately rendered to CITY, and CONTRACTOR shall be entitled to no further compensation. Upon termination, CITY shall be entitled to damages caused by such violation and the resulting termination, including, but not limited to the liquidated damages provided for in this Agreement. Notwithstanding the 90-day pre-termination notice requirement described above, if, in CITY's determination (which determination may be made in the sole and absolute discretion of CITY), the violation endangers public health, safety or welfare, termination may be effective immediately.

b. Remedies Not Exclusive

The rights and remedies of CITY under this Agreement, including the right to make a claim under the Performance Bond deposited with CITY by CONTRACTOR for reimbursement of any costs borne or damages incurred by CITY as a result of a default by CONTRACTOR under this Agreement and the right to perform during an emergency, shall be in addition to any

and all other rights and privileges CITY may have, and shall not be deemed to limit any such other rights or privileges of CITY under this Agreement or by virtue of any law.

c. Procurement of Services Following Termination

In the event this Agreement is terminated in whole or in part as provided in this section, CITY may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

**13. LIQUIDATED DAMAGES**

a. General

CITY finds, and CONTRACTOR agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by CITY as a result of a breach by CONTRACTOR of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

b. Performance Standards; Liquidated Damages for Failure to Meet Standards

The parties further acknowledge that consistent, reliable Recyclable Material Collection service is of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which CITY will suffer. Therefore, without prejudice to CITY's right to treat such non-performance as an event of default under this Section, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement

was made.

CONTRACTOR

Initial Here

CITY

Initial Here

CONTRACTOR agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

- i. The sum of Four Hundred Dollars (\$400) each location or incident for:
  1. each failure to commence service to a new customer account within seven (7) days after order;
  2. each occurrence of damage to private property that is not fixed by CONTRACTOR;
  3. each failure to remove graffiti from a Front-Loading Bin or Container within four (4) days of notification;
  4. each occurrence of beginning collection at property zoned for residential use before 7:00 a.m. or after 7:00 p.m.;
  5. each occurrence of discourteous behavior to a Customer;
  6. each failure to clean up spill or leakage of oil, hydraulic fluid, coolant, or other fluid from any collection vehicle used by CONTRACTOR, which causes a stain of 0.5 square feet or greater.
- ii. The sum of Two Hundred Fifty Dollars (\$250) for each failure to initially respond to a Customer complaint within one (1) business day.
- iii. The sum of One Hundred Dollars (\$100) for failure to:
  1. collect Recyclable Material, which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within the period described in this Agreement;
  2. properly return empty Containers to proper set-out location that avoids pedestrian or vehicular traffic impediments;
  3. close the lid of a Front-Loading Bin;
  4. clean up CONTRACTOR spills from Recyclable Material Containers; failure to solicit, by telephone, manager(s) of Multi-Family Residence Unit complexes without recycling services during a calendar year in an attempt to offer recycling services, and document said solicitations.
- iv. The sum of One Hundred Dollars (\$100) per calendar day for failure to:
  1. renew Performance Bond or renew Insurance and submit Certificate of Insurance prior to expiration date;
  2. submit monthly or annual report(s), as required. If CITY determines report is not complete, the CONTRACTOR shall be given ten (10) business days to complete report or report shall be considered late until such time as a correct and complete report is received by CITY;

3. maintain collection vehicle and equipment in condition specified by CITY;
4. provide alternative fueled collection and/or supervisory vehicles specified in Agreement.

v. The sum of Five Hundred Dollars (\$500) for each calendar day for failure to submit the "Container Distribution Plan" on August 1, 2009, and certification from CONTRACTOR that Containers and equipment supplies will be delivered on time to CONTRACTOR.

vi. The sum of One Thousand Dollars (\$1,000) per day for failure to:

1. Deliver all required Containers to customer accounts at Commencement of collection services
2. Remove all Contractor Containers from Customers on the last day of collection of handling services (week of January 6, 2020)
3. Collect and deliver all CONTRACTOR Containers to point of reuse, or recycling processing location within 30 days after cessation of collection and handling services

c. Procedure for Assessment of Liquidated Damages

CITY may assess liquidated damages for each calendar day or event, as appropriate, that CONTRACTOR is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages, CITY shall give CONTRACTOR notice of its intention to do so. The notice will include a brief description of the violation or incident of non-performance. CONTRACTOR may review (and make copies at its own expense) all information in the possession of CITY relating to the violation or incident of non-performance. CONTRACTOR may, within ten (10) days after receiving the notice, request a meeting with CITY. CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. CITY will provide CONTRACTOR with a written explanation of its determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. The decision of CITY shall be final.

d. Timing of Payment

CITY will deduct liquidated damages from monthly payment to CONTRACTOR. A summary explanation of the damages that have been deducted will be provided along with the payment.

## 14. GENERAL PROVISIONS

a. Force Majeure

CONTRACTOR shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of CONTRACTOR are

temporarily interrupted or discontinued for any of the following reasons: riots, wars, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, acts of God, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of CONTRACTOR. It is specifically understood that "other catastrophic events" include strikes, lockouts and other labor disturbances. When any of these events interrupt collection, transportation, processing of Recyclable Material by CONTRACTOR as required under this Agreement, CITY may elect to exercise its rights under Section 14(m).

b. Annexation

In the event that any community, neighborhood or other territory is hereafter annexed to CITY, recycling services shall, if requested by CITY, be immediately provided to such area by CONTRACTOR pursuant to this Agreement. CITY agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.

c. Independent Contractor

It is expressly understood and agreed that CONTRACTOR shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of CITY; that CONTRACTOR shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing shall be construed as creating a partnership or joint venture between CITY and CONTRACTOR. Neither CONTRACTOR nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to CITY employees.

d. Law to Govern

It is understood and agreed by the Parties that the law of the State of California shall govern the interpretation of this Agreement.

e. Fees and Gratuities

CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of Recyclable Material otherwise required to be collected under this Agreement. CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the collection of Recyclable Material otherwise required to be collected under this Agreement.

f. Amendment

Except as may otherwise be specifically provided in this Agreement, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both CITY and CONTRACTOR.

g. Assignment and Transferability; Subcontracting

Except as provided herein, this Agreement is not assignable or transferable in whole or in part by CONTRACTOR, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. In addition, the services to be performed by CONTRACTOR pursuant to this Agreement shall not be subcontracted to any third party without the written consent of CITY.

The sale, transfer, assignment or hypothecation of a majority ownership interest in CONTRACTOR after the Effective Date of this Agreement, including a cumulative sale, transfer, assignment or hypothecation, shall be deemed an assignment within the meaning of this Section and is prohibited in the absence of a written amendment to this Agreement. Placement of an ownership interest in a living trust shall not be deemed an assignment within the meaning of this Section, but distribution of the ownership interest from the living trust shall be deemed an assignment.

Any dispute between the CITY and the CONTRACTOR with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in CONTRACTOR has occurred or will occur shall be subject to reference pursuant to Code of Civil Procedure Section 638, et seq. with the presiding judge of the Santa Clara County Superior Court.

h. Compliance with Applicable Law

CONTRACTOR agrees that it will comply with all provisions of the Applicable Law, including CITY's business license ordinance, and will obtain all licenses and permits, and pay all taxes and fees, required under the Applicable Law.

i. Notices

All notices, demands, requests, consents or other communications which this Agreement contemplates, authorizes, requires or permits either Party to give to the other, shall be in writing and shall be personally delivered; or sent by regular mail, postage prepaid; or by facsimile transmission, all addressed to the respective Party as follows:

To CITY: City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, CA 95050  
Attention: Director of Streets & Automotive Services  
Facsimile: (408) 988-0237

To CONTRACTOR: Los Altos Garbage Company  
650 Martin Avenue  
Santa Clara, CA 95050  
or by facsimile at (408) 969-0340



or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section. Such notice shall be deemed effective on the date personally served or, if mailed, three (3) days from the date such notice is deposited in the mail.

j. Savings Clause and Entirety

If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement.

k. Attorney's Fees

In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

l. Entire Agreement

This Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties; provided, however, that this Agreement shall not relieve CONTRACTOR of any financial obligations that may have existed under any former franchise agreement with CITY.

m. Rights of City to Perform During Emergency

Should CONTRACTOR, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 14.a., fail, refuse or be unable to collect, transport, process and dispose of any or all of the Recyclable Material for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof Recyclable Material should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event CITY shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hour prior written notice to CONTRACTOR, or without such notice should the CITY determine that a further delay would endanger the health, safety, and welfare of CITY residents during the period of such emergency, to take possession of any or all equipment of CONTRACTOR previously used in the collection, transportation, processing and disposal of Recyclable Material or which CONTRACTOR would otherwise be obligated to collect and transport pursuant to this Agreement. CONTRACTOR agrees that in such event it will fully cooperate with CITY to effect such a transfer of possession for CITY's use. CONTRACTOR agrees that, in such event, CITY may take possession of and use all of said equipment and facilities without paying CONTRACTOR any rental or other charge, provided that CITY agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

CONTRACTOR further agrees that, in such event, it shall reimburse CITY for any and all costs and expenses, including the cost of CITY employees and/or third party laborers in the performance of emergency services pursuant to this Section, incurred by CITY in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of CONTRACTOR under the terms of this Agreement. CITY shall first subtract such reimbursement costs from compensation otherwise due CONTRACTOR under this Agreement, and to the extent such costs exceed those due CONTRACTOR, an itemized statement of costs and expenses shall be submitted for reimbursement to CONTRACTOR. To facilitate reimbursement of costs and expenses to CITY, CONTRACTOR agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by CITY and further agrees to allow CITY to collect such payments directly from the Customers. CITY agrees that it shall relinquish possession of all of the above mentioned property to CONTRACTOR upon written notice from CONTRACTOR to the effect that it is able to resume its responsibilities under this Agreement. It is agreed that CITY's exercise of its rights under this Section shall not affect Section 12 of this Agreement.

## **15. REPORTING, ACCOUNTING AND AUDITING**

### **a. Daily**

CONTRACTOR shall maintain and make available to the CITY, upon request, daily reports containing detailed audit information including, the number of tons of Recyclable Material collected from Residential premises and the route number, the vehicle number and CONTRACTOR's weight ticket for each load disposed or processed. The reports shall also reflect amounts received by CONTRACTOR from the sale of Recyclable Materials.

### **b. Quarterly**

CONTRACTOR shall submit written monthly reports to the CITY totaling the information contained in the daily reports. Reports are due within thirty (30) calendar days after the end of the reporting period.

### **c. Annual**

CONTRACTOR shall submit annual reports that cover a fiscal year's activity (July 1 – June 30) to the CITY on or before September 1 of each year totaling the information contained in the quarterly reports for the year. CONTRACTOR shall cooperate fully with CITY's AB 939 reporting requirements by providing CITY with requested information within a reasonable time of CONTRACTOR's receipt of CITY's request, but in no event longer than fifteen (15) days after such receipt. Upon request, CONTRACTOR shall make an oral presentation of the annual report to the City Council of the CITY at the City Council meeting specified by the CITY. In addition, CONTRACTOR must submit the "Contact With Multi-Family Unit Complexes Without Recycling Services" report by September 1 of each year of the Agreement.

d. Additional Information

CONTRACTOR shall use Reasonable Business Efforts to incorporate into the reports required by this section any additional information requested by the CITY. CONTRACTOR shall incorporate into such reports any new reporting information required by Applicable Law.

e. Contractor's Financial Statement

If requested by CITY, CONTRACTOR make available for CITY review annual financial statements and consolidated financial statements of CONTRACTOR and CONTRACTOR's Affiliated Companies, along with the related auditor's opinion, for each entity's previous fiscal year. CONTRACTOR shall deliver the requested statements within ten (10) days of CITY's request if the request is made for statements for a prior fiscal year, or within sixty (60) days of the end of CONTRACTOR's fiscal year, if the request is made for statements concerning the then-current fiscal year. CITY may review the audit plan and work papers of any accountant or auditor whose opinions CONTRACTOR is obligated to deliver to CITY in accordance with this Section. CITY shall hold CONTRACTOR's Accounting Records and financial statements confidential as described herein.

f. Affiliated Companies CONTRACTOR shall promptly notify CITY of any contracts or informal arrangements between CONTRACTOR and Affiliated Companies related to providing Services under this Agreement, and shall disclose such contracts or arrangements in the financial statements described herein.

For purposes of this Section, "Affiliated Companies" means all businesses which are directly or indirectly related to CONTRACTOR by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in CONTRACTOR.

g. Maintenance and Audit of Records CONTRACTOR shall accurately maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents relating to this Agreement, or performance under this Agreement, including routing, complete list of Customers, level of Customer's Services, Customer complaints, employee training, inventory, maintenance logs, etc. ("Records") for the term of this Agreement plus three (3) years, or any longer period required by Applicable Law. Contractor shall maintain complete accounting records pertaining to cash receipts, billing, and disposal records ("Accounting Records") prepared on an accrual basis in accordance with generally accepted accounting principles for at least three (3) years following the close of CONTRACTOR's fiscal year. CONTRACTOR shall maintain the Accounting Records in a manner that allows for the separate identification of all costs and revenues associated with providing Services hereunder and such costs and revenues shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by CONTRACTOR in locations other than the CITY.

The Records, Accounting Records, and records of Affiliated Companies if any, shall be subject to audit and inspection, for the primary purpose of reviewing billing operations, accounts receivable and customer service, by the CITY, its auditors or other agents, at any reasonable time, such audit or inspection to take place at the City Hall, if practicable, or at

CONTRACTOR's address indicated for receipt of notices. The CITY shall initially bear the cost of such audit.

h. Confidentiality

Any report from the Auditor to CITY resulting from the Auditor's review of CONTRACTOR's records shall be distributed in such a way as to protect the confidential nature of any proprietary information of CONTRACTOR, to the extent permitted by law. The report shall be limited to a letter of compliance relating to the adequacy of the accounting procedures, verification of increases or decreases in CONTRACTOR's costs, and shall not set forth CONTRACTOR's actual operating results. The Auditor shall also make such recommendations as it deems necessary as to the adequacy of CONTRACTOR's data collection methods, and as to the availability and sufficiency of the information, including direct, indirect and joint costs, with respect to any request by CONTRACTOR for increased compensation, and shall furnish CITY with its opinion as to whether an increase or decrease is supported and justified by CONTRACTOR's records.

The parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED FOR FORM:

\_\_\_\_\_  
HELEN LEICHTER  
City Attorney

By: \_\_\_\_\_  
JENNIFER SPARACINO  
City Manager

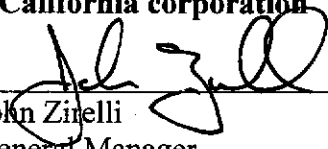
ATTEST:

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

1500 Warburton Avenue  
Santa Clara, California 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

**"CITY"**

**LOS ALTOS GARBAGE COMPANY  
a California corporation**

  
\_\_\_\_\_  
John Zirelli  
General Manager  
650 Martin Avenue  
Santa Clara, CA 95050  
Telephone: (408) 588-7224  
Fax: (408) 969-0340

**"CONTRACTOR"**

**EXCLUSIVE FRANCHISE AGREEMENT  
FOR COLLECTION AND HANDLING OF RECYCLABLES  
BETWEEN THE CITY OF SANTA CLARA  
AND  
LOS ALTOS GARBAGE COMPANY**

**EXHIBIT A**

**SCHEDULE OF TARIFFS**

1. CITY shall pay to CONTRACTOR, pursuant to Section 7.b of this Agreement, an amount equal to \$2.39 per month for each occupied Single-Family residence, Townhouse residence, and subscribing Multi-Family residence served by CONTRACTOR.
2. Rates for Special services
  - a. Manual "Push/Pull Charges" : \$1.00 per foot moved
  - b. Front-Loading Bin Cleaning Service Charge: \$50.00 flat fee cleaning charge
  - c. Driver-time reimbursement for delays lasting over fifteen (15) minutes caused by blocked access ways on the property or to level and/or manually reload containers or front-loading bins: \$50.00 per hour
  - d. Lock-Jam Bin Installations: \$40.00 flat fee
  - e. Fee to Service Contaminated Recycle Containers:
    - Toters: \$19.94 flat fee
    - Front-Loading Bins: \$88.80 flat fee

ALL OF THE ABOVE RATES INCLUDE RECYCLABLE MATERIAL COLLECTION, HANDLING, AND PROCESSING, LANDFILL FEES, CONTAINER COSTS, AND ADMINISTRATION FEES.

**EXCLUSIVE FRANCHISE AGREEMENT  
FOR COLLECTION AND HANDLING OF RECYCLABLES  
BETWEEN THE CITY OF SANTA CLARA  
AND  
LOS ALTOS GARBAGE COMPANY**

**EXHIBIT B**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 Each occurrence  
\$5,000,000 General Aggregate  
\$5,000,000 Products/Completed Operations Aggregate  
\$5,000,000 Personal Injury  
\$5,000,000 Project Aggregate

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

## B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of five million dollars (\$5,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

## C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

## D. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Legal Liability Insurance policy with coverage limits not less than five million dollars (\$5,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Contractor will use its best efforts to have the City, Council, officers, employees and volunteers



added as additional insureds under this policy. The following provisions shall apply:

1. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
2. Products/completed operations coverage shall extend a minimum of 3 years after project completion.
3. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors.
4. If the insured is using subcontractors the Policy must include work performed "by or on behalf" of the insured.
5. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitied may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
  - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given

to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

- 5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- 1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
- 2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
- 3. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
- 4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with

applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.

5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be

separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.

12. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor

shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

|  |                          |
|--|--------------------------|
| City of Santa Clara Street Department              |                          |
| c/o Insurance Data Services - Insurance Compliance |                          |
| P.O. 12010-S2                                      | or 151 North Lyon Avenue |
| Hemet, CA 92546-8010                               | Hemet, CA 92543          |
| Telephone: (951)766-2280; or                       |                          |
| Fax: (951)766-2299                                 |                          |

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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**EXCLUSIVE FRANCHISE AGREEMENT  
FOR COLLECTION AND HANDLING OF RECYCLABLES  
BETWEEN THE CITY OF SANTA CLARA  
AND  
LOS ALTOS GARBAGE COMPANY**

**EXHIBIT C**

**ETHICAL STANDARDS**

**Termination of Agreement for Certain Acts.**

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor<sup>1</sup> does any of the following:
  - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
  - b. Is convicted of a crime punishable as a felony involving dishonesty.<sup>3</sup>
  - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
  - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
  - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

<sup>1</sup> For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor can be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If the City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or
  2. If the City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, contractor's failure to maintain a required state issued license, failure to obtain a City business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
  3. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to the these provisions, Contractor may appeal the City action to the City Council by filing a written request with the City Clerk to have the matter heard within ten (10) days of the notice given by the City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

<sup>4</sup> Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**EXCLUSIVE FRANCHISE AGREEMENT  
FOR COLLECTION AND HANDLING OF RECYCLABLES  
BETWEEN THE CITY OF SANTA CLARA  
AND  
LOS ALTOS GARBAGE COMPANY**

**EXHIBIT D**

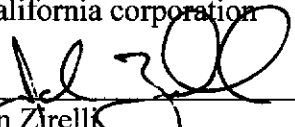
**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

I, John Zirelli, being first duly sworn, depose and state I am General Manager of Los Altos Garbage Company and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

**LOS ALTOS GARBAGE COMPANY**  
a California corporation

  
\_\_\_\_\_  
John Zirelli  
General Manager

**NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.



# CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of

San Mateo

ss.

☒ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

\_\_\_\_\_  
Signature of Document Signer No. 1

\_\_\_\_\_  
Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

19 day of September, 2008, by

(1) John Zirelli  
Name of Signer

☐ Personally known to me

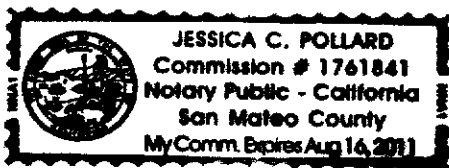
☒ Proved to me on the basis of satisfactory evidence  
to be the person who appeared before me (.) (.)  
(and

(2) \_\_\_\_\_  
Name of Signer

☐ Personally known to me

☒ Proved to me on the basis of satisfactory evidence  
to be the person who appeared before me.)

Jessica C. Pollard  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove  
valuable to persons relying on the document and could prevent  
fraudulent removal and reattachment of this form to another document.*

### Further Description of Any Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER #2

Top of thumb here

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE** Page 1 of 3DATE  
08/12/2008

|  |  |  |              |
|--|--|--|--------------|
| <b>PRODUCER</b><br><br>Willis North America, Inc.<br>26 Century Blvd.<br>P. O. Box 305191<br>Nashville, TN 372305191   |  | <b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b> |              |
|  |  | <b>INSURERS AFFORDING COVERAGE</b>   | <b>NAIC#</b> |
| <b>INSURED</b><br><br>Los Altos Garbage Company<br>Stevens Creek Disposal and Recycling<br>Attn: Gary Williams<br>650 Martin Avenue<br>Santa Clara, CA 95050 |  | INSURER A: ACE American Insurance Company  | 22667-101    |
|  |  | INSURER B: Lexington Insurance Company   | 19437-000    |
|  |  | INSURER C: ACE American Insurance Company  | 22667-103    |
|  |  | INSURER D:   |              |
|  |  | INSURER E:   |              |

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR | ADD'L | TYPE OF INSURANCE   | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS   |
|------|-------|---|---------------|----------------------------------|-----------------------------------|--|
| A    | X     | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> \$500,000 S.I.R.<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | XSLG21702845  | 10/1/2007                        | 10/1/2008                         | EACH OCCURRENCE \$ 1,500,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,500,000<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$ 1,500,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A    | X     | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS<br><input checked="" type="checkbox"/> \$500,000 S.I.R.<br><input checked="" type="checkbox"/> Auto PD Self-Insured               | XSAH08013202  | 10/1/2007                        | 10/1/2008                         | COMBINED SINGLE LIMIT (Ea accident) \$ 1,500,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$  |
|      |       | <b>GARAGE LIABILITY</b><br><input type="checkbox"/> ANY AUTO  |               |                                  |                                   | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN AUTO ONLY: EA ACC \$<br>AGG \$  |
| B    |       | <b>EXCESS/UMBRELLA LIABILITY</b><br><input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE<br><input type="checkbox"/> DEDUCTIBLE<br><input type="checkbox"/> RETENTION \$  | 6502081       | 10/1/2007                        | 10/1/2008                         | EACH OCCURRENCE \$ 5,000,000<br>AGGREGATE \$ 5,000,000<br>\$<br>\$<br>\$   |
| C    |       | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below<br>OTHER   | WCUC44466788  | 10/1/2007                        | 10/1/2008                         | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$See Below<br>E.L. DISEASE - EA EMPLOYEE \$See Below<br>E.L. DISEASE - POLICY LIMIT \$See Below                       |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

THIS VOIDS AND REPLACES PREVIOUSLY ISSUED CERTIFICATE DATED: 2/13/2008 WITH ID: 10318314

Workers Compensation Coverage:

WC \$25M EL \$2M subject to \$1,000,000 Self Insured Retention.

**CERTIFICATE HOLDER****CANCELLATION**City of Santa Clara c/o Insurance Data Services  
Attn: Connie Stein  
P O Box 12010 S2  
Hemet, CA 92546-8010

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

|   |  |  |  |   |                    |
|---|--|--|--|---|--------------------|
| <b>Willis</b>   |  | <b>CERTIFICATE OF LIABILITY INSURANCE</b>  |  | Page 2 of 3   | DATE<br>08/12/2008 |
| PRODUCER  |  | 877-945-7378   |  | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |                    |
| Willis North America, Inc.<br>26 Century Blvd.<br>P. O. Box 305191<br>Nashville, TN 372305191 |  | INSURERS AFFORDING COVERAGE  |  | NAIC#   |                    |
| INSURED   |  | Los Altos Garbage Company<br>Stevens Creek Disposal and Recycling<br>Attn: Gary Williams<br>650 Martin Avenue<br>Santa Clara, CA 95050 |  | INSURER A: ACE American Insurance Company<br>22667-101  |                    |
|   |  |  |  | INSURER B: Lexington Insurance Company<br>19437-000   |                    |
|   |  |  |  | INSURER C: ACE American Insurance Company<br>22667-103  |                    |
|   |  |  |  | INSURER D:  |                    |
|   |  |  |  | INSURER E:  |                    |

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

The City of Santa Clara, its council, commissions, officers, officers, employees, agents and volunteers are included as Additional Insured for General Liability and Auto Liability, but only as respects liability arising out of the operations of the Named Insured.

It is understood and agreed that the company Waives its right of Subrogation against City of Santa Clara c/o Insurance Data Services which may arise by reason of a payment of claim under the General Liability and Workers Compensation policies when required by contract..

Norcal is self-insured in California, and carries an excess WC policy that contains in its coverage form an automatic Waiver of Subrogation when required by contract. Attached is a page taken from their policy that spells out this in provision I of the policy conditions.

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

POLICY NUMBER: XSLG21702845

ENDT. #36

**ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION**

|   |                            |   |   |
|---|----------------------------|---|---|
| Named insured Norcal Waste Systems, Inc.                                |                            |   | Endorsement Number<br>36                    |
| Policy Symbol<br>XSL  | Policy Number<br>G21702845 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |

Insert the policy number. This remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**EXCESS COMMERCIAL GENERAL LIABILITY POLICY**

**SCHEDULE**

Name of Person or Organization:

City of Santa Clara  
c/o Insurance Data Service

WHO IS AN INSURED (Section 1) is amended to include as an insured the person(s) or organization(s) shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned or rented by you.

Authorized Agent

**SCHEDULE OF NAMED INSURED ENDORSEMENT**  
(with joint ventures)

|   |                            |   |   |
|---|----------------------------|---|---|
| Named insured<br>Norcal Waste Systems, Inc. |                            |   | Endorsement Number<br>1 (Page 1 of 2)       |
| Policy Symbol:<br>XSL                       | Policy Number<br>G21702845 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |
| Issued By (Name of insurance Company)       |                            |   |   |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
EXCESS COMMERCIAL GENERAL LIABILITY POLICY**

Schedule:

Alta Environmental Services, Inc.  
Alta Equipment Leasing Co., Inc.  
Auburn Placer Disposal Service  
California Transload, Inc.  
City Garbage Company of Eureka  
Del Norte Disposal, Inc.  
Dixon Sanitary Service  
Envirocal Systems, Inc.  
Envirocal, Inc.  
Foothill Disposal Co., Inc.  
Golden Gate Disposal & Recycling Company  
Great Northwest Recycling of Washington, Inc.  
Los Altos Garbage Company  
MACOR, INC.  
Mallard Lake Organics, Inc.  
Norcal Disposal & Recycling, Inc.  
Norcal Waste Service Center, Inc.  
Norcal Waste Services of Sacramento, Inc.  
Norcal Waste Services, Inc.  
Norcal Waste Solutions, Inc.  
Norcal Waste Systems Hay Road Landfill, Inc.  
Norcal Waste Systems of Butte County, Inc.  
South Valley Disposal & Recycling, Inc.  
Norcal Waste Systems of San Jose, Inc.  
San Bruno Garbage Co., Inc.  
Norcal Waste Systems of Southern California, Inc.

**SCHEDULE OF NAMED INSURED ENDORSEMENT**  
(with joint ventures)

|                                       |               |                          |                               |                    |  |
|---------------------------------------|---------------|--------------------------|-------------------------------|--------------------|--|
| Named Insured                         |               |                          |                               | Endorsement Number |  |
| Norcal Waste Systems, Inc.            |               |                          |                               | 1 (Page 2 of 2)    |  |
| Policy Symbol                         | Policy Number | Policy Period            | Effective Date of Endorsement |                    |  |
| XSL                                   | 021702845     | 10/01/2007 to 10/01/2008 | 10/01/2007                    |                    |  |
| Issued By (Name of Insurance Company) |               |                          |                               |                    |  |
| ACE American Insurance Company        |               |                          |                               |                    |  |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

Norcal Waste Systems Ostrom Road Landfill, Inc.  
 Norcal Waste Systems Pacheco Pass Landfill, Inc.  
 Norcal Waste Systems Crestline Landfill, Inc.  
 Norcal Waste Systems, Inc.  
 Norcal Waste Systems of Southern California, Inc.  
 Nortech Waste, LLC  
 SF Recycling & Disposal, Inc.  
 Recycle Central, Inc.  
 Sunset Properties, Inc.  
 Sunset Scavenger Company  
 Vacaville Sanitary Service  
 Vallejo Garbage Service, Inc.  
 West Coast Recycling Co.  
 Western Placer Recovery Company  
 Yuba Sutter Disposal, Inc.

and any organization over which you or any of your subsidiaries currently maintains majority ownership or a minority interest provided there is no other similar insurance available to that organization; and

any other organization you newly acquire or form and over which you maintain majority ownership or a minority interest; provided:

- a. there is no other similar insurance available to that organization; and
- b. you notify us of such acquisition not later than 60 days after the policy period.

As respects newly acquired or formed organizations:

1. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
2. Coverage B does not apply to "personal injury" or "advertising injury" (or "personal and advertising injury" if so defined in your policy) arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown in the Schedule as a named insured.

## NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSURED

|   |                            |   |   |
|---|----------------------------|---|---|
| Named Insured<br>Norco Waste Systems, Inc.                              |                            |   | Endorsement Number<br>18                    |
| Policy Symbol<br>XSL  | Policy Number<br>G21702845 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE

ScheduleOrganizationAdditional Insured Endorsement

(If no information is filled in, the schedule shall read: "All persons or entities added as additional insureds through an endorsement with the term 'Additional Insured' in the title.")

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to Section IV.4:

If other insurance is available to an insured we cover under any of the endorsements listed or described above (the "Additional Insured"), for a loss we cover under this policy, this insurance will apply to such loss and we will not seek contribution from the other insurance available to the Additional Insured. Your "retention amount" still applies to such loss, and we will only pay the Additional Insured for the "ultimate net loss" in excess of the "retained limit" shown in the Declarations of this policy.

\_\_\_\_\_  
Authorized Agent



**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

|  |               |                          |                               |
|--|---------------|--------------------------|-------------------------------|
| Named Insured Norcoast Waste Systems, Inc. |               |                          | Endorsement Number            |
|  |               |                          | 22                            |
| Policy Symbol                              | Policy Number | Policy Period            | Effective Date of Endorsement |
| XSL  | G21702845     | 10/01/2007 to 10/01/2008 | 10/01/2007                    |
| Issued By (Name of Insurance Company)      |               |                          |                               |
| ACE American Insurance Company             |               |                          |                               |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**EXCESS COMMERCIAL GENERAL LIABILITY POLICY****SCHEDULE****Name of Person or Organization:**

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

\_\_\_\_\_  
Authorized Agent

# ADDITIONAL INSURED ENDORSEMENT

|  |               |                            |                               |                    |    |
|--|---------------|----------------------------|-------------------------------|--------------------|----|
| Named Insured  |               | Norcal Waste Systems, Inc. |                               | Endorsement Number | 24 |
| Policy Symbol  | Policy Number | Policy Period              | Effective Date of Endorsement |                    |    |
| XSA  | HC8013202     | 10/01/2007 to 10/01/2008   | 10/01/2007                    |                    |    |
| Issued By (Name of Insurance Company):<br>ACE American Insurance Company |               |                            |                               |                    |    |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

## EXCESS BUSINESS AUTO POLICY

Additional Insured(s): City of Santa Clara

A. For a covered "auto," Who Is Insured is changed to include as an "insured," the persons or organizations named in this endorsement. However, these persons or organizations are an "insured" only for "bodily injury" or "property damage" resulting from acts or omissions of:

1. You.
2. Any of your employees or agents.
3. Any person operating a covered "auto" with permission from You, any of your employees or agents.

B. The persons or organizations named in this endorsement are not liable for payment of your premium.

C. This insurance shall be primary and non-contributory with respect to insurance for a third party where and to the extent required by written contract between you and such third party.

Authorized Agent

# SCHEDULE OF NAMED INSURED

|   |                            |   |   |  |
|---|----------------------------|---|---|--|
| Named Insured<br>Norcal Waste Systems, Inc.                             |                            |   | Endorsement Number<br>1 (Page 1 of 2)       |  |
| Policy Symbol<br>XSA  | Policy Number<br>R08013202 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |  |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |  |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the inception of the policy.

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

**EXCESS BUSINESS AUTO COVERAGE FORM  
EXCESS TRUCKERS COVERAGE FORM**

The Named Insured shown in the Declarations is amended to read as follows:

Norcal Waste Systems, Inc.  
Alta Environmental Services, Inc.  
Alta Equipment Leasing Co., Inc.  
Auburn Placer Disposal Service  
California Transload, Inc.  
City Garbage Company of Eureka  
Del Norte Disposal, Inc.  
Dixon Sanitary Service  
Envirocal Systems, Inc.  
Envirocal, Inc.  
Foothill Disposal Co., Inc.  
Golden Gate Disposal & Recycling Company  
Great Northwest Recycling of Washington, Inc.  
Los Altos Garbage Company  
MACOR, INC.  
Mallard Lake Organics, Inc.  
Norcal Disposal & Recycling, Inc.  
Norcal Waste Service Center, Inc.  
Norcal Waste Services of Sacramento, Inc.  
Norcal Waste Services, Inc.  
Norcal Waste Solutions, Inc.  
Norcal Waste Systems Hay Road Landfill, Inc.  
Norcal Waste Systems of Butte County, Inc.  
Norcal Waste Systems of San Jose, Inc.

Authorized Agent

# SCHEDULE OF NAMED INSURED

|   |                            |   |   |
|---|----------------------------|---|---|
| Named Insured<br>Norcal Waste Systems, Inc.                             |                            |   | Endorsement Number:<br>1. (Page 2 of 2)     |
| Policy Symbol<br>XSA  | Policy Number<br>H08013202 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |

Insert the policy number. The remainder of the information is to be completed only when the endorsement is issued subsequent to the inception of the policy.

Norcal Waste Systems of Southern California, Inc.  
 Norcal Waste Systems Ostrom Road Landfill, Inc.  
 Norcal Waste Systems Pacheco Pass Landfill, Inc.  
 Norcal Waste Systems Crestline Landfill, Inc.  
 Nortech Waste, LLC  
 SF Recycling & Disposal, Inc.  
 Recycle Central, Inc.  
 San Bruno Garbage Co., Inc.  
 South Valley Disposal & Recycling, Inc.  
 Sunset Properties, Inc.  
 Sunset Scavenger Company  
 Vacaville Sanitary Service  
 Vallejo Garbage Service, Inc.  
 West Coast Recycling Co.  
 Western Placer Recovery Company  
 Yuba Sutter Disposal, Inc.

Named Insured includes First Named Insured; other entities to be covered as of inception and any organization other than a partnership or joint venture, and over which you currently maintain ownership or majority interest, provided there is no similar insurance available to that organization, and any other organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, provided:

- There is no other similar insurance available to that organization; and
- You notify us of such acquisition not later than 60 days after the end of the policy period.

As respects newly acquired or formed organizations, coverage does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past joint venture that is not shown as Named Insured on this schedule.

Authorized Agent

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS**

|   |                            |   |   |
|---|----------------------------|---|---|
| Named Insured<br>Norcal Waste Systems, Inc.                             |                            |   | Endorsement Number<br>2                     |
| Policy Symbol<br>XSA  | Policy Number<br>H08013202 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**EXCESS BUSINESS AUTO COVERAGE FORM  
EXCESS TRUCKERS COVERAGE FORM**

We waive the right of recovery we may have against the person or organization shown in the Schedule below because of payments we make for injury or damage arising out of the use of a "covered auto". The waiver applies only to the person or organization shown in the Schedule.

**SCHEDULE**

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

\_\_\_\_\_  
Authorized Agent

**BROADENED POLLUTION LIABILITY COVERAGE – COVERED AUTOS**

|   |                            |   |   |
|---|----------------------------|---|---|
| Named Insured<br>Norcal Waste Systems, Inc.                             |                            |   | Endorsement Number<br>11                    |
| Policy Symbol<br>XSA  | Policy Number<br>H08013202 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the completion of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**EXCESS BUSINESS AUTO COVERAGE FORM  
EXCESS TRUCKERS COVERAGE FORM**

LIABILITY COVERAGE is changed as follows:

LIABILITY COVERAGE under this policy is extended to apply to "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" that are, or that are contained in any property that is:

- (1) being transported or towed by the covered "auto", or
- (2) otherwise in the course of transit by the "insured."

However, this extension of coverage does not apply to:

- (1) "pollutants" that are being handled, or are contained in any property that is being handled, for movement into, onto, or from the covered "auto"; or
- (2) liability assumed under a contract or agreement.

DEFINITIONS: The definition of "covered pollution cost or expense" is replaced by the following:

D. "Covered pollution cost or expense" means any cost or expense arising out of:

- (1) Any request, demand or order; or
- (2) Any claim or "suit" by or on behalf of a governmental authority demanding:

That the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. That are, or that are contained in any property that is:

- (1) Being handled, or handled for movement into, onto or from the covered "auto";
- (2) Being stored, disposed of, treated or processed in or upon the covered "auto"; or

- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured."

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in paragraph 6 b. or d.c. of the definition of "mobile equipment."

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto" and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage

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Authorized Agent



ace usa

# Specific Excess Workers' Compensation and Employers' Liability Insurance Policy Information Page

Company: ACE American Insurance Company Policy Number: WCU 244466786

Item 1. Insured: Norcal Waste Systems, Inc.

Item 2. Address: 160 Pacific Avenue, Suite 200, San Francisco, CA 94111

Item 3. States (in which coverage is to apply): CA

Item 4. Policy Period: From: 10/01/2007 To: 10/01/2008  
12:01 A.M. Standard Time at the Mailing Address shown herein

## Item 5. Our Limit of Indemnity:

### Part One: - Workers' Compensation Insurance

Each Accident: \$ Statutory  
Each Employee for Disease: \$ Statutory

### Part Two: - Employers Liability Insurance including Stop Gap Coverage

Each Accident: \$ 2,000,000  
Each Employee for Disease: \$ 2,000,000  
Annual Aggregate: \$

Part Three: - Voluntary Compensation - The Limit of Indemnity for Voluntary Compensation is included in, not in addition to, the Limits of Indemnity for Part One and Part Two, above.

## Item 6. Your Retention

### Part One: - Workers' Compensation, Part Two - Employers Liability and Part Three - Voluntary Compensation Combined

Each Accident: \$ 1,000,000  
Each Employee for Disease: \$ 1,000,000

## Item 7. Premium and Premium Computation

Estimated Total Annual Remuneration: \$ \*\*  
Rate per \$100 of Remuneration: \$ \*\*  
Deposit Premium: \$ 781,540  
Minimum Premium: \*\*Refer to Notice of Election  
Other Charges: \$

CIGA

\$ 15,324

\$

\$

Item 8. This policy includes these endorsements and schedules (at inception date). See attached schedules and endorsements

### Producer Name and Mailing Address:

Willis Insurance Services  
One Bush Street  
San Francisco, CA 94104

Producer Code: 355152

Marketing Office: 8FU/5DR

Countersigned By:

(AUTHORIZED REPRESENTATIVE)



Named Insured: Norcal Waste Systems, Inc.

Policy Number: WCU C44466788

Effective 12:01 AM: 10/01/2007 to 10/01/2008

| End'l. No. | Form Name | Form Number/<br>Edition Date |
|------------|-----------|------------------------------|
|------------|-----------|------------------------------|

SCHEDULE OF COVERAGE FORMS

|   |            |
|---|------------|
| U.S. Treasury Department's Office of<br>Foreign Assets Control ("OFAC") Advisory<br>Notice to Policyholders | ILP0010104 |
| ACE Producer Compensation Practices &<br>Policies   | WC990342   |
| Specific Excess Workers' Compensation and<br>Employers' Liability Policy                                    | CKE1167k   |
| To Our California Policyholders   | CR9062a    |

SCHEDULE OF ENDORSEMENTS

|   |            |
|---|------------|
| 1. Name and Address Amendatory Endorsement                            | CK18364a   |
| 2. Loss and Expense Endorsement (ALAE<br>Included)                    | CK12887100 |
| 3. Voluntary Compensation Schedule                                    | CKE18768a  |
| 4. Notification of Premium Adjustment                                 | WC990444   |
| 5. Cap on Losses from Certified Acts of<br>Terrorism Endorsement      | WC990459   |
| 6. Earlier Notice of Cancellation and Non-<br>Renewal Endorsement     | WC990791   |
| 7. Policyholder Disclosure Notice Of Terrorism/<br>Insurance Coverage | TRIA12a    |
| 8. Trade or Economic Sanctions Endorsement                            | WC990773   |

# NAME AND ADDRESS AMENDATORY ENDORSEMENT

|   |                            |   |   |  |
|---|----------------------------|---|---|--|
| Named Insured<br>Norcal Waste Systems, Inc.                             |                            |   | Endorsement Number<br>1 (Page 1 of 2)       |  |
| Policy Symbol<br>WCU  | Policy Number<br>C44455788 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |  |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |  |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

### SPECIFIC EXCESS WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

It is agreed that the Named Insured and address are amended to read as follows:

Alta Environmental Services, Inc.  
Alta Equipment Leasing Co., Inc.  
Auburn Placer Disposal Service  
California Transload, Inc.  
City Garbage Company of Eureka  
Del Norte Disposal, Inc.  
Dixon Sanitary Service  
Envirocal Systems, Inc.  
Envirocal, Inc.  
Foothill Disposal Co., Inc.  
Golden Gate Disposal & Recycling Company  
Great Northwest Recycling of Washington, Inc.  
Los Alamos Garbage Company  
MACOR, INC.  
Mallard Lake Organics, Inc.  
Norcal Disposal & Recycling, Inc.  
Norcal Waste Service Center, Inc.  
Norcal Waste Services of Sacramento, Inc.  
Norcal Waste Services, Inc.  
Norcal Waste Solutions, Inc.

Authorized Agent

# NAME AND ADDRESS AMENDATORY ENDORSEMENT

|   |                            |   |   |  |
|---|----------------------------|---|---|--|
| Named Insured<br>Norcal Waste Systems, Inc.                             |                            |   | Endorsement Number<br>1 (Page 2 of 2)       |  |
| Policy Symbol<br>WCU  | Policy Number<br>C44466788 | Policy Period<br>10/01/2007 to 10/01/2008 | Effective Date of Endorsement<br>10/01/2007 |  |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |   |  |

Insert the policy number. The remainder of this information is to be completed only when this endorsement is issued subsequent to the expiration of the policy.

Norcal Waste Systems Hay Road Landfill, Inc.  
 Norcal Waste Systems of Butte County, Inc.  
 South Valley Disposal & Recycling, Inc.  
 Norcal Waste Systems of San Jose, Inc.  
 San Bruno Garbage Co., Inc.  
 Norcal Waste Systems of Southern California, Inc.  
 Norcal Waste Systems Ostrom Road Landfill, Inc.  
 Norcal Waste Systems Pacheco Pass Landfill, Inc.  
 Norcal Waste Systems, Inc.  
 Norcal Waste Systems of Southern California, Inc.  
 Nortech Waste, LLC  
 SF Recycling & Disposal, Inc.  
 Recycle Central, Inc.  
 Sunset Properties, Inc.  
 Sunset Scavenger Company  
 Vacaville Sanitary Service  
 Vallejo Garbage Service, Inc.  
 West Coast Recycling Co.  
 Western Placer Recovery Company  
 Yuba Sutter Disposal, Inc.

Authorized Agent

**G. Omnibus Reconciliation Act -- Government Access Clause**

We will make available this policy and all documents needed to confirm the premium paid by you if the Secretary of Health and Human Services or the Comptroller General of the United States find that the policy is a contractor described in Section 1861 of the Social Security Act, 42 USC Section 1395, or any amendment to it, and they or you ask for our documents.

If the Secretary of Health and Human Services or the Comptroller General asks for access to our documents, we will immediately notify you and make these documents available to you, unless prohibited by law.

The right to access will be determined by the above statute, or any amendment to it, or any rules or regulations established under it.

**H. Other Insurance**

If the insured carries other valid insurance, reinsurance or indemnity with any other insurer covering a loss covered by this policy (other than insurance that is purchased to apply in excess of the sum of Your Retention and the Limit of Indemnity hereunder), we shall not be liable for a greater proportion of such loss than the applicable Limit of Indemnity of all valid and collectible insurance, reinsurance or indemnity against such loss.

If the insured carries other insurance with us covering a loss within the limit covered by this policy, the insured must elect which policy shall apply and we shall be liable under the policy so elected and shall not be liable under any other policy.

**I. Recovery From Others**

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them. Any amount recovered as a result of such proceedings, together with all expenses necessary to the recovery of any such amount shall be apportioned as follows:

1. if there is insurance coverage in excess of Our Limit of Indemnity, that insurer shall first be reimbursed to the extent of its actual payment;
2. we shall then be reimbursed to the extent of our actual payment and then we will pay the balance, if any, to you.

The expenses of all proceedings necessary to the recovery of any such amount shall be apportioned between you and us in the ratio of their respective recoveries as finally settled. If there should be no recovery in proceedings instituted solely on our initiative, the expenses thereof shall be borne by us.

→ In the event of any payment under this policy for a Loss for which you have waived the right of recovery in a written contract entered into prior to the Loss, we hereby agree to also waive our right of recovery but only with respect to such Loss.

**J. Sole Representative**

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to give or receive notice of cancellation, accept indemnity, receive return premium or request changes in this policy.

**K. Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent.

**L. Unintentional Errors and Omissions**

Your failure or omission to disclose all hazards existing as of the inception date of the policy shall not prejudice you with respect to the coverage afforded by this policy provided such failure or omission is not intentional and you did not know about such hazards prior to the commencement of the policy period.

Named Insured: Los Altos Garbage Compa

August 15, 2008

Glenna Bowlin  
Insurance Data Services  
Insurance Compliance  
P.O. Box 12010-S2  
Hemet, CA 92546-8010

Telephone: 415-291-1527  
Fax: 415-982-7978  
Website: www.willis.com

Direct Line: 415-291-1527  
Direct Fax: 415-982-7978  
E-mail: michelea.nicholas@willis.com

RE: Certificate for City of Santa Clara  
Named Insured: Stevens Creek Disposal and Recycling

Dear Glenna:

Attached is the certificate of insurance for City of Santa Clara showing coverages for Stevens Creek Disposal and Recycling.

As previously mentioned, ACE American Insurance Company uses their own policy forms so ISO form CA 9948 is comparable to ACE's form DA-20343, Broadened Pollution Liability Coverage – Covered Autos.

The full policy numbers include the policy symbols as well. The full auto policy number is XSAH08013202, the full general liability policy number is XSLG21702845 and the full Workers' Compensation policy number is WCUC44466788.

The Workers' Compensation policy does not have a separate waiver of subrogation endorsement. This is included in the policy form, CKE-1167k (10/06) from which I included page 10 of 11 where the waiver wording is shown.

Norcal Waste Systems is the first Named Insured. Los Altos Garbage Company and Stevens Creek Disposal and Recycling are two of the Named Insured entities. I have included the list of Named Insureds with the certificate.

Let me know if you need anything further.

Sincerely,

Michelea K. Nicholas  
Assistant Client Manager

Enclosure

Willis Insurance Services of California  
One Bush Street, 9th Floor  
San Francisco, CA 94104

0371719